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10 **UNITED STATES DISTRICT COURT**
11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 **RICKEY LAROY PHELPS,**

13
14 Plaintiff,

15 v.

16 **PEOPLE OF THE STATE OF**
17 **CALIFORNIA,**

18 Defendant.
19

Case No. 15-cv-2409-BAS(RBB)

**ORDER DISMISSING
COMPLAINT WITHOUT
PREJUDICE FOR LACK OF
SUBJECT MATTER
JURISDICTION**

20 Plaintiff Rickey LaRoy Phelps, proceeding *pro se*, filed a 3-page handwritten
21 complaint arising from a past criminal proceeding and an encounter involving
22 individuals named Bryanna F. and Tressor Ndandu. There is no identifiable request
23 for relief in the complaint. In the civil cover sheet, Plaintiff describes the action as
24 follows: “I had nothing to do with the [D]etroit case of Tresor and I never raped or
25 touched Breana [sic] no DNA of mine found.” And it appears that Plaintiff has failed
26 to properly effect service.

27 As a *pro se* litigant, the Court construes Plaintiff’s complaint liberally. *See*
28 *Karim-Panahi v. L.A. Police Dep’t*, 839 F.2d 621, 623 (9th Cir. 1988) (“In civil rights

1 cases where the plaintiff appears *pro se*, the court must construe the pleading liberally
 2 and must afford plaintiff the benefit of any doubt.”). “It is settled law that the
 3 allegations of [a *pro se* plaintiff’s] complaint, ‘however inartfully pleaded’ are held
 4 ‘to less stringent standards than formal pleadings drafted by lawyers[.]’” *See Haines*
 5 *v. Kerner*, 404 U.S. 519, 520 (1972).

6 For the following reasons, the Court **DISMISSES WITHOUT PREJUDICE**
 7 the action in its entirety for lack of subject matter jurisdiction.

8 9 **I. ANALYSIS**

10 “Federal courts are courts of limited jurisdiction.” *Kokkonen v. Guardian Life*
 11 *Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). “They possess only that power authorized
 12 by Constitution or a statute, which is not to be expanded by judicial decree.” *Id.*
 13 (internal citations omitted). “It is to be presumed that a cause lies outside this limited
 14 jurisdiction and the burden of establishing the contrary rests upon the party asserting
 15 jurisdiction.” *Id.* (internal citations omitted); *see also Abrego Abrego v. The Dow*
 16 *Chem. Co.*, 443 F.3d 676, 684 (9th Cir. 2006).

17 “Subject matter jurisdiction based upon diversity of citizenship requires that
 18 no defendant have the same citizenship as any plaintiff.” *Tosco Corp. v. Communities*
 19 *for a Better Env’t*, 236 F.3d 495, 499 (9th Cir. 2001) (per curiam), *abrogated on other*
 20 *grounds by Hertz Corp v. Friend*, 130 S. Ct. 1181 (2010). Alternatively, federal
 21 district courts also have “original jurisdiction of all civil actions arising under the
 22 Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331. “A plaintiff
 23 suing in federal court must show in his pleading, affirmatively and distinctly, the
 24 existence of whatever is essential to federal jurisdiction, and, if he does not do so, the
 25 court . . . on discovering the [defect], must dismiss the case, unless the defect be
 26 corrected by amendment.” *Tosco*, 236 F.3d at 499 (quoting *Smith v. McCullough*,
 27 270 U.S. 456, 459 (1926)).

28 Although there has not been a request for dismissal, it is well-established that

1 “a district court’s duty to establish subject matter jurisdiction is not contingent upon
 2 the parties’ arguments.” *See United Investors Life Ins. Co. v. Waddell & Reed Inc.*,
 3 360 F.3d 960, 966 (9th Cir. 2004). Courts may consider the issue *sua sponte*. *Demery*
 4 *v. Kupperman*, 735 F.2d 1139, 1149 n.8 (9th Cir. 1984). Indeed, the Supreme Court
 5 has emphasized that “district courts have an ‘independent obligation to address
 6 subject-matter jurisdiction *sua sponte*.” *Grupo Dataflux v. Atlas Global Grp., L.P.*,
 7 541 U.S. 567, 593 (2004) (quoting *United States v. S. Cal. Edison Co.*, 300 F. Supp.
 8 2d 964, 972 (E.D. Cal. 2004)).

9 The complaint itself does not specifically invoke any particular jurisdiction,
 10 including diversity and federal question. However, looking to the Civil Cover Sheet
 11 attached to the complaint, Plaintiff checked the box for “U.S. Government
 12 Defendant” under “basis of jurisdiction.” Upon reviewing the complaint, there is no
 13 mention of the United States Government as a party this action. Rather, the defendant
 14 in this action is identified as the People of the State of California. And though
 15 Plaintiff mentions a “racist trail” against him and “unconstitutional” statements
 16 argued by the district attorney, even liberally construing the complaint, without
 17 knowing the relief sought, the Court cannot determine that Plaintiff asserts a claim
 18 that arises from the U.S. Constitution or a federal statute.

19 Plaintiff also lacks diversity jurisdiction. There is no identifiable amount in
 20 controversy. Furthermore, Plaintiff indicates in the civil cover sheet that he is a
 21 citizen of California, and it is apparent that Defendant is also a citizen of California.
 22 “Subject matter jurisdiction based upon diversity of citizenship requires that no
 23 defendant have the same citizenship as any plaintiff.” *Tosco*, 236 F.3d at 499. Given
 24 that both Plaintiff and Defendant are citizens of California, Plaintiff also lacks
 25 diversity jurisdiction in this action. *See id.*

26 The Court also notes that Plaintiff’s proof of service is defective as it fails to
 27 comply with Rule 4(c), which states that “[a]ny person who is at least 18 years old
 28 and *not* a party may serve a summons and complaint,” and Rule 4(j)(2). Based on the


1 last order mailed to Plaintiff being returned as undeliverable with no forwarding
2 address, Plaintiff also fails to comply Civil Local Rule 83.11. If this action proceeds,
3 it is important that Plaintiff complies with these rules. Failure to do so may result in
4 sanctions under Civil Local 83.1, including dismissal of this action.

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6 **II. CONCLUSION & ORDER**

7 In light of the foregoing, the Court **DISMISSES WITHOUT PREJUDICE**
8 Plaintiff's complaint in its entirety for lack of subject matter jurisdiction.

9 **IT IS SO ORDERED.**

10
11 **DATED: June 21, 2016**


Hon. Cynthia Bashant
United States District Judge